

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - BAY CITY

In re:

Case No. 03-20983-WS

MICHAEL L. BRANCH,

Chapter 13

Hon. Walter Shapero

Debtor.

_____/

ORDER (I) DENYING DEBTOR'S MOTION FOR ORDER HOLDING THE INTERNAL
REVENUE SERVICE IN CONTEMPT OF COURT AND (II) DENYING UNITED STATES'
MOTION FOR RELIEF FROM STAY TO ALLOW IRS TO APPLY PRE-PETITION TAX
OVERPAYMENT TO PRE-PETITION TAX LIABILITY

The matters having come before the Court on (I) Debtor's Motion for Order Holding the Internal Revenue Service in Contempt of Court and (II) United States' Motion for Relief from Stay to Allow IRS to Apply Pre-Petition Tax Overpayment to Pre-Petition Tax Liability; the Court having heard oral argument on the motion and having considered the briefs; the Court having adopted the Sixth Circuit Bankruptcy Appellate Panel's ("B.A.P.") reasoning in In re Shultz, 2006 Bankr. LEXIS 814 (B.A.P. 6th Cir. 2006), where the B.A.P. held that the IRS is not entitled to a lift of stay because no cause exists including the mere existence of a right to setoff tax overpayments against liabilities; the Court having also concluded that the Order Confirming Plan entered on July 24, 2003, is not specific and definite enough so as to justify awarding civil contempt sanctions against the IRS in light of the setoff issue now being decided by the Court. See Piggly Wiggly Clarksville v. Mrs. Baird's Bakeries, Inc., 177 F.3d 380 (5th Cir. 1999); and In re Seal, 192 B.R. 442 (Bankr. W.D. Mich. 1996).

IT IS THEREFORE AND HEREBY ORDERED that Debtor's Motion for Order Holding

the Internal Revenue Service in Contempt of Court and United States' Motion for Relief from Stay to Allow IRS to Apply Pre-Petition Tax Overpayment to Pre-Petition Tax Liability are DENIED.

Entered: August 14, 2006

/s/ Walter Shapero

Walter Shapero

United States Bankruptcy Judge